

ENVIRONMENTAL HEALTH DEPARTMENT

LAND USE AGENCY

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July 19, 2007

Ms. JoAnn Jaschke
Cal/EPA Unified Program
P. O. Box 2815
1001 I Street
Sacramento, CA 95812

Re: Amador County CUPA Evaluation and Progress/Update July 2007

Dear Ms. Jaschke:

Amador County Environmental Health is please to submit a report on the progress achieved in addressing the deficiencies identified in the September 8, 2006 CUPA evaluation date. Actions taken to address the remaining deficiencies identified in the May 3, 2007 CAL-EPA "CUPA Evaluation and Response to Deficiency Progress Report" are discussed by program element and identified deficiency.

Unified Program Administration

Deficiency No. 4 - The CUPA does not have AEO forms incorporated into the Inspection and Enforcement Plan.

A final draft revised Hazardous Materials Ordinance and Inspection and Enforcement Plan which contains the Administrative Enforcement Order policy has been approved by the Ad Hoc committee of the Board of Supervisors on Code Enforcement with minor revisions for submission to the Board of Supervisors for approval. Consultations with the District Attorney and the Health Officer have been conducted and their approval obtained. The goal is to establish an AEO procedure and policy through County Ordinance 2 months. Copies of the draft policy flow chart and penalty matrix are attached.

Hazardous Materials Release Plans and Inventory Programs

Deficiency No. 7 – The CUPA Area Plan does not contain all the required elements.

A notice of intent to apply for a 2007 / 2008 Hazardous Material Emergency Preparedness grant (Grant) was submitted to Region IV LEPC on June 18, 2007. The Board of Supervisors approved the submission of the Grant application on the July 10, 2007 consent calendar. A completed Grant application was hand delivered to the OES Region IV LEPC staff at the Region IV LEPC meeting on July 17, 2007. The grant application proposes to hire an experienced consultant to prepare the area plan in

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coordination with Environmental Health. A notice of intent to apply for the Grant was received by Region IV LEPC by two agencies and only the Amador County application had been submitted by the July 17, 2007 deadline. The Grant is for a one year period over which an updated area plan will be prepared.

Deficiency No. 9 – CUPA is not inspecting all businesses subject to the business plan for compliance every three years.

24 hazardous materials business plan inspections were conducted in this reporting period. Delegation of hazardous materials business plan inspections to the Agriculture Commissioner has not yet been completed.

Deficiency No. 10 – CUPA is not requiring businesses, subject to the hazardous materials reporting requirements to annually submit their hazardous materials inventory or certification statement. A follow up process to insure that the hazardous materials inventory or certification statement was not explained.

Review of certification statements, permit conditions, and permit fee payment is conducted as part of the annual permit renewal. Facilities that have not submitted certification statements, hazardous materials inventory statements, or have out dated hazardous materials business plans are not issued current permits and a notification letter is issued stating the reason for non renewal of the permit and describing the actions and time frame necessary to return to compliance and receive an operating permit.

Permit fees are invoiced in December and due in January of each year. Certification statements are enclosed with the annual fee invoices.

Deficiency No. 11 – CUPA is not requiring businesses, subject to the hazardous materials reporting requirements, to certify and review the update of the entire business plan every three years.

Review of existing hazardous materials business plans are conducted as part of the annual permit renewal. Facilities without dated business plans (3 years since last submittal) are requested to submit new updated plans, not issued current permits, and a notification letter is issued stating the reason for non renewal of the permit and describing the actions and time frame necessary to return to compliance and receive an operating permit.

The final draft Inspection and Enforcement Plan requires the submission of a new hazardous materials business plan application and supporting documentation for the renewal of the 3 year permit.

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California Accidental Release Prevention Program

Deficiency No. 12-- The CUPA has not established a dispute resolution procedure.

A dispute resolution procedure for the California Accidental Release Prevention Program is included in the final draft revised Hazardous Materials Ordinance and Inspection and Enforcement Plan as provided by section 2780.1(5). The Hazardous Materials Ordinance and Inspection and Enforcement Plan contains a dispute resolution procedure as part of the Administrative Enforcement Order policy.

Thank you for your help and assistance in the addressing of the deficiencies in the Amador County CUPA Program. Please call me at (209) 223-6439 if you have any questions.

Very truly yours,



Robert Fourt, REHS
Amador County CUPA Program

RF:ew

Enclosure

c. Ability to pay adjustments. No adjustments for ability to pay may be made if the penalty has been adjusted upward because of failure to cooperate or because of the facility's poor compliance history. Adjustments to the total base penalty may be made if immediate payment of the final penalty would cause financial hardship. In this case, consideration may be given to payments extended over a certain term. If extending the penalty over a period of time would cause extreme financial hardship. In this case, consideration may be given to reduce the total base penalty.

8. Final Penalty. The final penalty consists of the total base penalty with all adjustments made.

C. Initial Penalties

1. Hazardous Waste. For violations of H&SC Chapter 6.5, the violator shall be liable for penalties as provided in §25189.2 (a-c).

a. The total penalty calculated for any single violation shall not exceed the amount specified in statute; \$25,000 per day, per violation (H&SC, §25189.2).

b. The following matrix will be used to determine initial penalty for a hazardous waste violation:

Initial Penalty Matrix – Hazardous Waste (per day of violation)

Violation of Chapter 6.5, Division 20 H&SC

Actual – Potential Harm	Major	Moderate	Minimal
Major Deviation	\$25,000 to \$20,000	\$20,000 to \$15,000	\$15,000 to \$6,000
Moderate Deviation	\$20,000 to \$15,000	\$15,000 to \$6,000	\$6,000 to \$2,000
Minimum Deviation	\$15,000 to \$6,000	\$6,000 to \$2,000	\$2,000 to \$1,000

2. Underground Storage Tanks. For violations of H&SC Chapter 6.7, the violator shall be liable for penalties as provided in §25299 (a-c).

a. H&SC §25299 (a) and (b) call for penalties no less than \$500 or no more than \$5,000 per day, per violation, per Underground Storage Tank.

b. For violations of H&SC §25299 (c), the respondent is liable for no more than \$5,000 per day, per violation, per Underground Storage Tank.

c. The following matrix will be used to determine initial penalty for an underground storage tank system violation:

Initial Penalty Matrix – Underground Storage Tanks (per day of violation)

Violation of Chapter 6.7, Division 20 H&SC

Actual – Potential Harm	Major	Moderate	Minimal
Major Deviation	\$5,000 to \$3,000	\$3,000 to \$2,000	\$2,000 to \$1,000
Moderate Deviation	\$3,000 to \$2,000	\$3,000 to \$2,000	\$2,000 to \$1,000
Minimum Deviation	\$2,000 to \$1,000	\$1,000 to \$500	\$500 to \$0.00

3. Hazardous Materials Business Plan Program. For violations of H&SC §25514.5. Any business/facility that violates Article 1, Chapter 6.95, Division 20 of the H&SC is liable for an amount not greater than \$2,000 for each day in which the violation occurs, or greater than \$5,000 for each day in which the violation occurs for any business that knowingly violates after reasonable notice of the violation.

Initial Penalty Matrix – Hazardous Materials Business Plan (per day of violation)

Violation of Article 1, Chapter 6.95, Division 20 H&SC

Actual – Potential Harm	Major	Moderate	Minimal
Major Deviation	\$2,000 to \$1,200	\$1,200 to \$800	\$800 to \$400
Moderate Deviation	\$1,200 to \$800	\$800 to \$400	\$400 to \$200
Minimum Deviation	\$800 to \$400	\$400 to \$200	\$200 to \$0.00

Knowing Violation of Article 1, Chapter 6.95, Division 20 H&SC after Reasonable Notice

Actual – Potential Harm	Major	Moderate	Minimal
Major Deviation	\$5,000 to \$3,000	\$3,000 to \$2,000	\$2,000 to \$1,000
Moderate Deviation	\$3,000 to \$2,000	\$2,000 to \$1,000	\$1,000 to \$500
Minimum Deviation	\$2,000 to \$1,000	\$1,000 to \$500	\$500 to \$0.00

4. Failure to Report Unauthorized Spill or Release of Hazardous Material or Waste

a. Businesses or facilities shall, upon discovery, immediately report any release or threatened release of a hazardous material to ACEHD and the Governor's Office of Emergency Services Warning Center. In addition, each business or facility and any employee, authorized representative, agent, or designee of the business or facility shall provide all state, city, county fire or public health or safety personnel and emergency rescue personnel with access to the facility.

b. Pursuant to §25514.5 of the H&SC, any business or facility that violates these requirements are civilly liable in an amount not to exceed \$2,000 per day for each violation, or greater than \$5,000 for each day in which the violation occurs for any business that knowingly violates after reasonable notice of the violation.

Initial Penalty Matrix – Unreported Spills or Releases (per day of violation)

Violation of §25514.5(a) H&SC

Actual – Potential Harm	Major	Moderate	Minimal
Major Deviation	\$2,000 to \$1,200	\$1,200 to \$800	\$800 to \$400
Moderate Deviation	\$1,200 to \$800	\$800 to \$400000	\$400 to \$200
Minimum Deviation	\$800 to \$400	\$400 to \$200	\$200 to \$0.00

Knowing Violation of §25514.5(b) H&SC after Reasonable Notice

Actual – Potential Harm	Major	Moderate	Minimal
Major Deviation	\$5,000 to \$3,000	\$3,000 to \$2,000	\$2,000 to \$1,000
Moderate Deviation	\$3,000 to \$2,000	\$2,000 to \$1,000	\$1,000 to \$500
Minimum Deviation	\$2,000 to \$1,000	\$1,000 to \$500	\$500 to \$100

5. California Accidental Release Prevention (Cal-ARP) Program.

a. Chapter 6.95, Article 2 of the H&SC stipulates regulatory requirements that must be followed by businesses or facilities that store or maintain acutely hazardous materials in quantities above threshold levels.

b. Pursuant to Chapter 6.95, Article 2, §25540(a) of the H&SC, any stationary source that violates this article shall be liable in the amount of not less than \$2,000 per day in which the violation occurs.

c. Pursuant to Chapter 6.95, Article 2, §25540(b) of the H&SC, any stationary source that knowingly violates this article after reasonable notice of the violation shall be liable in an amount not to exceed \$25,000 per day for each day in which the violation occurs.

Initial Penalty Matrix – Cal-ARP Program (per day of violation)

Violation of Chapter 6.95, Article 2, §25540(a) H&SC

<u>Actual – Potential Harm</u>	<u>Major</u>	<u>Moderate</u>	<u>Minimal</u>
Major Deviation	\$2,000 to \$1,200	\$1,200 to \$800	\$800 to \$400
Moderate Deviation	\$1,200 to \$800	\$800 to \$400,000	\$400 to \$200
Minimum Deviation	\$800 to \$400,000	\$400 to \$200	\$200 to \$0.00

Knowing Violation of Chapter 6.95, Article 2, §25540(b) H&SC after Reasonable Notice

<u>Actual – Potential Harm</u>	<u>Major</u>	<u>Moderate</u>	<u>Minimal</u>
Major Deviation	\$25,000 to \$15,000	\$15,000 to \$10,000	\$10,000 to \$5,000
Moderate Deviation	\$15,000 to \$10,000	\$10,000 to \$5,000	\$5,000 to \$2,500
Minimum Deviation	\$10,000 to \$5,000	\$5,000 to \$2,500	\$2,500 to \$0.00

6. Above Ground Storage Tank Program.

a. For violations of H&SC §25270.5, the violator shall be liable for a penalty of not more than \$5,000 for each day on which the violation continues.

b. If the violator commits a second or subsequent violation, a penalty of not more than \$10,000 for each day on which the violation continues may be imposed.

Initial Penalty Matrix – Above Ground Storage Tank (per day of violation)

Violation of §25270.5 H&SC

<u>Actual – Potential Harm</u>	<u>Major</u>	<u>Moderate</u>	<u>Minimal</u>
Major Deviation	\$5,000 to \$3,000	\$3,000 to \$2,000	\$2,000 to \$1,000
Moderate Deviation	\$3,000 to \$2,000	\$2,000 to \$1,000	\$1,000 to \$500
Minimum Deviation	\$2,000 to \$1,000	\$1,000 to \$500	\$500 to \$0.00

Violation of §25270.5 H&SC (second or subsequent violations)

<u>Actual – Potential Harm</u>	<u>Major</u>	<u>Moderate</u>	<u>Minimal</u>
Major Deviation	\$10,000 to \$6,000	\$6,000 to \$4,000	\$4,000 to \$2,000
Moderate Deviation	\$6,000 to \$4,000	\$4,000 to \$2,000	\$2,000 to \$1,000
Minimum Deviation	\$4,000 to \$2,000	\$2,000 to \$1,000	\$1,000 to \$500

Initial Inspection and Compliance Directive

Opportunity to Correct Letter
Documentation / Description of Violation
Actions Necessary to Return to Compliance



Return to Compliance

Notice of Violation
Documentation / Description of Violation
Actions Necessary to Return to Compliance



Return to Compliance

No Compliance

Show Cause Letter
Documentation / Description of Violation
Actions Necessary to Return to Compliance - Penalties
Time Schedule



Consent Order
Violations
Corrections
Penalties
Return to Compliance

No Agreement on Order

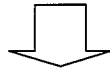
Unilateral Order
Violations
Corrections
Penalties

Cease and Desist Order
Violations
Corrections
Penalties



Notice of Defense (15–20 Days)
Request Administrative Hearing
Order is Final if No Notice of Defense

Permit Revocation



Amador County Hearing Officer or Administrative Law Judge

Finalize Decision of Hearing Board - Administrative Law Judge
Environmental Health will Issue **Decision and Order**
RP has 30 days to Appeal to **Superior Court** with **Writ of Mandate**
Order is final 30 days without Appeal

State Response to the corrective actions taken by Amador County's CUPA

Response to July 2007 update

Previously Corrected Deficiencies: 1, 2, 3, 5, 6, 8, 13- 19, 20, 21, and 22

Remaining Deficiencies: 4, 7, 9, 10, 11, and 12

Unified Program Administration

- 4. Deficiency:** The CUPA does not have AEO forms incorporated in their Inspection and Enforcement Plan.

Cal/EPA Response: Cal/EPA is satisfied with the progress the CUPA is making towards correcting this deficiency and will continue to monitor the progress via deficiency progress reports.

Hazardous Materials Release Plans and Inventory Programs

- 7. Deficiency:** The CUPA's Area Plan does not contain all the required elements.

Cal/EPA and OES Response: In the next deficiency progress report, the CUPA needs to provide an update on the status of Grant and work on updating the Area Plan. OES had the understanding that Amador was going to send OES their latest Area Plan for review and comment. The comments were to assist Amador in the update of their area plan.

- 9. Deficiency:** The CUPA is not inspecting all the businesses subject to the business plan program for compliance at least once every three years.

Cal/EPA and OES Response: According to the CUPA's April 20, 2007 deficiency progress report, there are 182 Business Plan facilities in Amador. If the 24 business plan inspections were completed within the last 3 months, and the CUPA continues to inspect 24 every 3 months, then the CUPA will eventually meet their inspection frequency requirement within 1 1/2 years. In the next deficiency progress report, the CUPA needs to provide an update on the status of meeting their inspection frequency.

- 10. Deficiency:** The CUPA is not requiring businesses, subject to the hazardous materials reporting requirements, to annually submit their hazardous material inventory or certification statement.

Cal/EPA and OES Response: According to the CUPA's April 20, 2007 deficiency progress report, the CUPA was awaiting their Board of Supervisors approval of their AEO Policy. Once approved the CUPA was going to begin enforcement actions against the 16 business plan facilities out of compliance. The state did see some status report on their AEO in the attachment for Deficiency #4. In the next deficiency progress report, the CUPA needs to provide an update on the status of their AEO Policy and enforcement actions for ensuring businesses meet the annual inventories or certification requirement.

- 11. Deficiency:** The CUPA is not requiring a business to certify the review and update of their entire business plan every three years. To correct this deficiency, the CUPA will ensure that each handler reviews the business plan, submitted pursuant to subdivision (a) or (b) at least once every three years after the initial submission to determine if a revision is needed and shall certify to the administering agency that the review was made and that any necessary changes were made to the plan. A copy of those changes shall be submitted to the administering agency as a part of that certification.

Cal/EPA and OES Response: The CUPA states their policy to ensure Business Plan facilities update their BPS every 3 yrs. What has the result been since initiating this policy? Are Business updating their plans? Is the CUPA awaiting approval of their AEO policy to take enforcement actions against non compliers. In the next deficiency progress report, the CUPA should answer these questions.

California Accidental Release Prevention Program

- 12. Deficiency:** The CUPA has not established a dispute resolution procedure.

Cal/EPA and OES Response: In the next deficiency progress report, the CUPA needs to provide a copy of their Dispute Resolution Procedures.